

EXHIBIT 2

Honorable Ronald B. Leighton

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Gordon Hempton,

Plaintiff,

v.

Pond5, Inc., a Delaware Corporation; and
Pond5 user ckennedy342, a corporation or
individual of type unknown,

Defendants.

NO. 3:15-cv-05696-DWC

PLAINTIFF'S FIRST
INTERROGATORIES AND REQUESTS
FOR PRODUCTION OF DOCUMENTS

TO: Pond5, Inc.; and

TO: Curt H. Feig and Larry E. Altenbrun of Nicoll Black & Feig PLLC, attorneys for
Pond5, Inc.

PLEASE TAKE NOTICE that, pursuant to FRCP 26, FRCP 33, and FRCP 34, Plaintiff

Gordon Hempton requests you answer the following Plaintiff's First Interrogatories and

Requests for Production of Documents, here propounded.

Interrogatories. You are requested to answer the following interrogatories in writing,
under oath, and you and your attorney must then sign them below, before serving, within
30 days after they are served on you, upon the undersigned counsel at the offices of Breskin
Johnson & Townsend PLLC, 1000 Second Avenue, Suite 3670, Seattle, WA 98104. These

PLAINTIFF'S FIRST INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS - 1
(No.3:15-cv-05696-RBL)

BRESKIN | JOHNSON | TOWNSEND ^{PLLC}
1000 Second Avenue, Suite 3670
Seattle, Washington 98104 Tel: 206-652-8660

interrogatories are intended as continuing interrogatories, requiring you to answer by supplemental answers, presenting any information within the scope of these interrogatories that may be acquired by you or by your employees, agents, attorneys, or representatives following your original answers, all as required by FRCP 26(e). Space for your answers has been provided after each interrogatory. If the space provided for the answer is not sufficient, please attach additional pages to the page on which the answer is set forth.

Request for Production of Documents. Request is also made, pursuant to FRCP 26 and 34, that you produce, for inspection and copying, the documents described in each request made below at the offices of Breskin Johnson & Townsend PLLC, 1000 Second Avenue, Suite 3670, Seattle, WA 98104. True and accurate copies of the requested documents may be produced with the answers to these interrogatories, but in any event shall be provided within 30 days after they are served on you.

These Requests for Production of Documents are directed to you and to your agents, attorneys, accountants, consultants, representatives, private investigators, and any and all persons acting on your or their behalf. These requests for production are intended to encompass the original and all non-duplicate copies (those that differ from the original in some respect, for example, by reason of notations made on the copy) of all documents of any nature which are now or have at any time been within your care, custody or control.

If you contend that any document encompassed by any request is privileged, in whole or in part, or otherwise object to its production, then with respect to each such document:

(1) State with specificity the reason or reasons for your objection and/or the nature of any privilege asserted;

(2) State the name and address of each person having knowledge of the factual basis, if any, upon which the privilege or other objection is asserted; and

(3) Specify:

- (a) The date of the document;
- (b) The nature or type of the document (i.e., whether letter, telegram, memorandum, etc.);
- (c) The subject matter of the document;
- (d) The name and address of each individual who prepared the document;
- (e) The name and address of each individual to whom the document, or a copy thereof, has been at any time provided;
- (f) The name and address of each person from whom the document has been obtained by you;
- (g) The name and address of the individual or entity having possession of the original of the document (or if the whereabouts of the original is unknown, the name and address of each person or entity known or believed to have a copy or copies thereof);
- (h) All other information necessary to identify the document with sufficient particularity to meet the requirements for its inclusion in a motion for production pursuant to FRCP 37; and
- (i) If such document was, but is no longer within your care, custody or control, state what disposition was made of it, the reason for such disposition, and the date upon which it was so disposed.

(4) **To the extent that portions of such document are not subject to a claim of privilege, plaintiff requests that the documents be produced, redacting the material claimed to be privileged, and that defendant provide the basis for the claimed privilege as to the redacted portion of the document.**

DEFINITIONS

Included below are definitions of the terms used in these interrogatories and requests for production. Please read these definitions carefully, as some of the terms used in these

1 interrogatories and requests for production are given definitions which may be more expansive
2 than the definitions which those terms are given in common usage.

3 1. "You" and "your" shall refer to and include the party to whom this discovery is
4 directed, its current and former attorneys, agents, investigators, accountants, officers, directors,
5 and employees.

6 2. "Person" shall include any individual, corporation, partnership, association, or
7 any other entity of any kind.

8 3. "Document" includes, but is not limited to, any paper, agreement, note, book,
9 photograph, x-ray, reproduction, pamphlet, brochure, manual, periodical, letter, report,
10 memorandum, summary, notation, statement, draft, message, telegram, telex, wire, cable,
11 record, log book, study, working paper, map, survey, drawing, blueprint, sketch, model, chart,
12 schedule, graph, index, tape, minutes, minute book, contract, lease, invoice, purchase order,
13 ledger, check, check stub, estimate, record of purchase or sale, correspondence, correspondence
14 files, desk calendar, work paper, business form, appointment book, time sheet, business form,
15 printout, *information kept on a computer, computer disk, or in digital or computerized form*,
16 computer tape, computer printout, computer program, computer disc, or index thereto,
17 pleading, transcription or taping of telephone or personal conversation or conference, including
18 intercompany, intracompany, interoffice, and intra office memorandum or other document
19 regarding any conference, conversation, or other communication, and any and all other written,
20 printed, typed, taped, recorded, transcribed, punched, filmed, or graphic matter, however
21 produced or reproduced.

22 If a document has been prepared in several copies or additional copies have been made,
23 and the copies are not identical, each non-identical copy is a separate "document," and should
24 be produced for inspection and copying.

25 4. "Identify," when applied to a person, requires that you give the person's full
26 name, residence address, residence telephone, business or occupation, job title or description,
27 employer, business address and business telephone. If you do not have current information on

1 the person being identified, then give their last known residence address, residence telephone,
2 etc.

3 5. “Identify,” when referring to a business, organization, or other entity means to
4 give the legal name of the entity, a description of its nature (e.g., corporation, partnership, joint
5 venture, etc.), any business or assumed name under which it does business, its principal place
6 of business, and the address of the office(s) of such entity which are involved in the transaction
7 about which the interrogatory or request is seeking information.

8 6. “Identify,” when used in reference to a document, requires that you (regardless
9 of whether you may assert a privilege or other objection to its disclosure) describe the
10 document (i.e., whether it is a letter, memorandum, contract, etc.) and state its date, the name of
11 the person or persons whose signatures are affixed or for whom signature lines were prepared if
12 the document was unsigned, the person who prepared it, the person to whom it was addressed
13 and/or prepared for, a short synopsis of the document’s contents, and to otherwise describe it
14 with sufficient detail to meet the requirements for its inclusion in a FRCP 34 request for
15 production or a FRCP 37 motion to compel, and also requires that you identify all persons
16 known to you to have control or possession of such documents or copies thereof.

17 7. “Contributor” means a contributor to the Pond5 system as such term is used by
18 Pond5 in the Pond5 Terms of Use and includes any user, seller or licensor that uploads content
19 on the Pond5 system.

20 8. “Customer” means any individual or legal entity, including a company or a
21 governmental agency or instrumentality that downloads, uses, pays for, buys or licenses content
22 from the Pond5 system.

23 9. Customer includes but is not limited to any individual or legal entity, including a
24 company or a governmental agency or instrumentality that are Licensees of content from Pond5
25 as further set forth in the Pond5 Content License Agreement.

26 10. “State with particularity,” when used in reference to a matter of fact means to
27 state every material fact and circumstance specifically and completely (including, but not

1 limited to, date, time, location, and the identity of all participants), and whether each such fact
2 or circumstance is stated on knowledge, information, or belief, or is alleged without foundation.

3 11. “State with particularity,” when used in reference to a matter of law is directed
4 to your attorney and means to state every relevant legal theory and material conclusion of law
5 specifically and completely and to cite the principal authorities relied upon in support of each.

6 12. “Personally identifiable information,” includes but is not limited to emails,
7 phone numbers, IP addresses, physical addresses, names, user names, fax number or other
8 means by which the individual or entity can be identified.

INTERROGATORIES AND REQUESTS FOR PRODUCTION

INTERROGATORY NO. 1: Identify all Customers who downloaded Gordon Hempton's copyrighted works of authorship from January 1, 2012 to the present. Identify and describe with particularity all efforts to recall Mr. Hempton's material or otherwise respond to your knowledge that Mr. Hempton did not authorize the use of his works.

ANSWER:

INTERROGATORY NO. 2: Identify all Contributors who uploaded Plaintiff's copyrighted works of authorship. Identify and describe with particularity all efforts to recall Mr. Hempton's material or otherwise respond to Mr. Hempton's assertion that he did not authorize the use of his works.

ANSWER:

INTERROGATORY NO. 3: Identify and describe with particularity all methods in place at Pond5 from January 1, 2012 to the present to detect against the uploading, downloading, display, copying or distribution of works of authorship without authorization from the copyright owner or other party with authority to license the content.

ANSWER:

INTERROGATORY NO. 4: Identify all processes that Pond5 utilizes or has utilized to detect whether or not a sound recording is copyrighted or has a registered copyright with the United States Copyright Office. If different processes were used at different times since January 1, 2012, identify the relevant time frame when each process with designed, created and implemented.

1 **ANSWER:**

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4 **INTERROGATORY NO. 5:** Identify all Pond5 past or current Contributors who
5 Pond5 has identified as uploading works without authorization from the author of the work.
6 For each such Contributor, identify the date the Contributor became a Pond5 Contributor, the
7 date and means that Pond5 identified that the use of the work was not authorized, the
8 unauthorized works, the owner of the unauthorized work, the IP address(es) used by the
9 Contributor and any Customer(s), the sales or licensing of the works, the revenue from the sale
10 or licensing of works, the payments to Contributors for the works, any personally identifiable
11 information of the Contributor and any Customer(s) and any actions taken by Pond5 to respond
12 to the unauthorized use of the works.

13 **ANSWER:**

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16 **INTERROGATORY NO. 6:** Identify all Pond5 Contributors or Customers whose
17 accounts have been suspended or terminated by Pond5 because of suspected piracy,
18 infringement, privacy violations or other action in violation of your terms of service.

19 **ANSWER:**

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22 **INTERROGATORY NO. 7:** Identify all Pond5 past or current Contributors who have
23 uploaded Gordon Hempton's copyrighted works to Pond5. For each such Contributor, identify
24 the date the Contributor became a Pond5 Contributor, the date and means that Pond5 identified
25 that the use of the work was not authorized, any unauthorized works uploaded, the IP
26 address(es) used by the Contributor, the revenue received by Pond5 from the works, the fees
27

1 paid to any Contributor for the works, any personally identifiable information of the
2 Contributor and any actions taken by Pond5 to respond to the unauthorized use of the works.

3 **ANSWER:**

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6 **INTERROGATORY NO. 8:** Identify all Pond5 past or current Customers who have
7 downloaded Gordon Hempton's works from Pond5. For each such Customer, identify the date
8 the Customer became a Pond5 Customer, the unauthorized works, the IP address(es) used by
9 the Customer, the revenue received by Pond5 from the works, the fees paid to any Contributor
10 for the works, any personally identifiable information of the Customer and any actions taken by
11 Pond5 to respond to the unauthorized use of the works.

12 **ANSWER:**

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15 **INTERROGATORY NO. 9:** Identify the physical location, IP address, and any other
16 identifying feature of all computer servers under the custody and control of Pond5 or Pond5's
17 agent(s) upon which Gordon Hempton's works have been copied, stored, transmitted or used.

18 **ANSWER:**

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21 **INTERROGATORY NO. 10:** Identify how Pond5's computer servers containing
22 uploaded works are organized.

23 **ANSWER:**

1 **INTERROGATORY NO. 11:** Identify the total number of files on Pond5 for sale in
2 each month from January 1, 2012, to the present. For each month, specify the number and type
3 of media offered for sale, the revenue received by Pond5, and the amounts paid to Contributors.

4 **ANSWER:**
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7 **INTERROGATORY NO. 12:** For each month from January 1, 2012 to the present,
8 identify the total number of files that Pond5 has identified as being uploaded without
9 authorization from the owner of the file or other person with authority to license the file. For
10 each month, specify the number and type of media offered for sale, the revenue received by
11 Pond5, and the amounts paid to Contributors.

12 **ANSWER:**
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15 **INTERROGATORY NO. 13:** Identify all efforts that Pond5 takes or has taken from
16 January 1, 2012 to the present to detect whether files are uploaded by Contributors or third
17 parties without authorization from the copyright holder or author of the work, including the
18 dates such strategies were or have been employed.

19 **ANSWER:**
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22 **INTERROGATORY NO. 14:** For each month from January 1, 2012 to the present,
23 identify the total number of current Contributors of media to Pond5. Please specify the number
24 of contributors for each media type purveyed by Pond5.

25 **ANSWER:**
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1 **INTERROGATORY NO. 15:** Identify Pond5's gross revenue from the licensing or
2 sales of content for each month from January 1, 2012 to the present.

3 **ANSWER:**
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6 **INTERROGATORY NO. 16:** Identify all types of review undertaken by Pond5
7 employees and/or contractors before allowing the media to be downloaded from Pond5's site.

8 **ANSWER:**
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11 **INTERROGATORY NO. 17:** Identify any and all efforts that Pond5 has undertaken
12 to contact Contributors who have downloaded Gordon Hempton's works from Pond5's and
13 identify the post-download uses, storage, dissemination, reproduction, or transfer of work.

14 **ANSWER:**
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17 **INTERROGATORY NO. 18:** For each Interrogatory and Request for Production,
18 identify any and all persons who have assisted in your response to the Interrogatory or Request
19 for Production. For each such person, identify their name, title, phone number, email address
20 and dates of employment at Pond5 (or in the case of contractors, the date of contracting).

21 **ANSWER:**
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24 **INTERROGATORY NO. 19:** Identify any and all Pond5 employees or independent
25 contractors who provide services for you in preventing the authorized use of copyrighted
26 works, including any curators. For each such person, identify their roles and responsibilities,
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1 name, title, phone number, email address and dates of employment at Pond5 (or in the case of
2 contractors, the date of contracting).

3 **ANSWER:**

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6 **INTERROGATORY NO. 20:** Identify any and all facts which support your claim
7 that “Pond5 is entitled to the safe harbor protections under the Digital Millennium Copyright
8 Act. Without limitation, Pond5 is specifically entitled to the safe harbor protections afforded
9 pursuant to 17 U.S.C. § 512(c).”

10 **ANSWER:**

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13 **INTERROGATORY NO. 21:** Identify any and all facts which support your claim
14 that “Plaintiff’s claims against Pond5 may be barred by the doctrine of fair use.”

15 **ANSWER:**

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18 **REQUESTS FOR PRODUCTION**

19 **REQUEST FOR PRODUCTION NO. 1:** Please produce all documents referenced in
20 or related to your response to the foregoing interrogatories.

21 **RESPONSE:**

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24 **REQUEST FOR PRODUCTION NO. 2:** Please provide a copy of all insurance
25 policies, indemnification agreements, cover letters, coverage correspondence or any other
26 document related to insurance policies which might provide insurance coverage for Plaintiff’s
27 claims.

1 **RESPONSE:**

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4 **REQUEST FOR PRODUCTION NO. 3:** Please provide a complete accounting of
5 the history of Gordon Hempton's copyrighted sound files on Pond5, including which files have
6 been downloaded, when they were downloaded and/or purchased, who downloaded and/or
7 purchased them (including name, username, IP addresses, identity, location, business for whom
8 the Contributor was an agent, paypal username, paypal payment data information available to
9 Pond5), as well as how much the Contributor paid to download each file.

10 **RESPONSE:**

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13 **REQUEST FOR PRODUCTION NO. 4:** Please provide all documents related to
14 Pond5 user ckennedy342, including but not limited to his/her/its name, identity, address, IP
15 address, history of uploads, paypal payment data, any associated usernames or other
16 username(s) that Pond5 knows or suspects of being the same actual person/entity as
17 ckennedy342 or in any way associated with ckennedy342.

18 **RESPONSE:**

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21 **REQUEST FOR PRODUCTION NO. 5:** Please provide all documents related to
22 Pond5's attempt to identify the Contributor ckennedy342 and terminate ckennedy342's
23 account.

24 **RESPONSE:**

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1 **REQUEST FOR PRODUCTION NO. 6:** Please provide all documents and
2 information received by Pond5 from the user ckennedy342.

3 **RESPONSE:**
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6 **REQUEST FOR PRODUCTION NO. 7:** Please provide all documents and
7 information received by Pond5 from any user who uploaded or downloaded Gordon Hempton's
8 works.

9 **RESPONSE:**
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12 **REQUEST FOR PRODUCTION NO. 8:** Please produce all documents related to any
13 other lawsuits, claims and/or settlements against or involving Pond5 related to any allegation
14 that Pond5 sold, hosted, licensed or made available to third parties on Pond5's website without
15 authorization by the author, owner, licensor, licensee or copyright holder.

16 **RESPONSE:**
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19 **REQUEST FOR PRODUCTION NO. 9:** Please produce all documents related to
20 efforts that Pond5 takes or has taken in the past to detect unauthorized use of files and/or
21 Contributors who are uploading files without proper authorization, including any internal
22 protocols, detection software, third-party studies or research regarding the nature or extent of
23 pirated files on Pond5, Pond5's exposure and/or liability related to such files, and any
24 efforts/mechanisms/tools that Pond5 could employ to identify and/or combat piracy and/or
25 copyright infringement.

26 **RESPONSE:**
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1 **REQUEST FOR PRODUCTION NO. 10:** For any period from January 1, 2012 to
2 the present, please produce copies of all current and past license agreements, user agreements,
3 and any other agreements that Pond5 Contributors must review or consent.

4 **RESPONSE:**
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7 **REQUEST FOR PRODUCTION NO. 11:** Please produce all documents related to
8 the review and approval process that Pond5 undertakes before accepting submissions for
9 download/sale on its website.

10 **RESPONSE:**
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13 **REQUEST FOR PRODUCTION NO. 12:** Please produce all takedown notices or
14 other claims of infringing activity received by Pond5 from January 1, 2012 to the present.

15 **RESPONSE:**
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18 **REQUEST FOR PRODUCTION NO. 13:** Please produce all documents related to
19 the structure of Pond5 computer servers on which uploaded works are stored.

20 **RESPONSE:**
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23 **REQUEST FOR PRODUCTION NO. 14:** Please produce all documents related to the
24 storage of Gordon Hempton's copyrighted works on Pond5's servers.

25 **RESPONSE:**
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1 **REQUEST FOR PRODUCTION NO. 15:** Please produce any Pond5 organizational
2 charts from January 1, 2012 to the present.

3 **RESPONSE:**
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6 **REQUEST FOR PRODUCTION NO. 16:** Please produce all documents related to
7 any efforts Pond5 has undertaken to contact Contributors who have downloaded and/or
8 purchased Gordon Hempton's works.

9 **RESPONSE:**
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12 **REQUEST FOR PRODUCTION NO. 17:** Please produce all correspondence related
13 to any claims that Gordon Hempton's works were uploaded or downloaded onto Pond5's
14 system or servers without Mr. Hempton's authorization.

15 **RESPONSE:**
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18 **REQUEST FOR PRODUCTION NO. 18:** Please produce any and all documents that
19 related to your affirmative defenses asserted in your Answer in this lawsuit.

20 **RESPONSE:**
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23 **REQUEST FOR PRODUCTION NO. 19:** Please produce all documents related to
24 your claim that "Pond5 is entitled to the safe harbor protections under the Digital Millennium
25 Copyright Act. Without limitation, Pond5 is specifically entitled to the safe harbor protections
26 afforded pursuant to 17 U.S.C. § 512(c)."

27 **RESPONSE:**

1 **REQUEST FOR PRODUCTION NO. 20:** Please produce all documents related to
2 your claim that “Plaintiff’s claims against Pond5 may be barred by the doctrine of fair use.”

3 **RESPONSE:**

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7 DATED this 10th day of December, 2015.

8 BRESKIN JOHNSON & TOWNSEND PLLC

9
10 By: s/ Roger M. Townsend
11 Roger M. Townsend, WSBA No. 25525
12 1000 Second Avenue, Suite 3670
13 Seattle, WA 98104
14 (206) 652-8660
15 (206) 652-8290 Fax
16 rtownsend@bjtlegal.com
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VERIFICATION

STATE OF WASHINGTON)
COUNTY OF KING) ss.

_____, being first duly sworn, on oath deposes and says:

That _____ is the _____ named herein, has read the interrogatories and requests for production contained herein and the answers and responses thereto; believes the answers and responses to be true and correct; and has not interposed any answers or objections for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

SUBSCRIBED AND SWORN to before me this _____ day of _____, 201__.

Print Name: _____
NOTARY PUBLIC in and for the State of
Washington, residing at _____
My Appointment expires: _____

CERTIFICATION OF COUNSEL

I, _____, the attorney for the _____, certify that I have read the answers, responses, and objections (if any) to the foregoing interrogatories and requests and, to the best of my knowledge, information, and belief formed after a reasonable inquiry, they are (1) consistent with the rules of civil procedure and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonably or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation.

DATED: _____.

Attorney for _____

CERTIFICATE OF SERVICE

Under penalty of perjury under the laws of the State of Washington, I hereby certify that on this 10th day of December, 2015, I caused a copy of the foregoing document to be served on the following attorneys of record in the manner indicated:

Curt H. Feig
Larry E. Altenbrun
Nicoll Black & Feig PLLC
1325 Fourth Avenue, Suite 1650
Seattle, WA 98101
Tel: 206-838-7555
cfeig@nicollblack.com
laltenbrun@nicollblack.com

[X] Via Email Only per e-Service Agreement

/s/ Jamie Telegin
Jamie Telegin, Legal Assistant